



October 5, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Notice of Ex Parte presentation in CS Docket No. 97-80, PP Docket No. 00-67

Dear Ms. Dortch:

Today, Parul Desai of Consumers Union (CU) and John Bergmayer of Public Knowledge met with Bradley Gillen and Krista Witanowski of Commissioner Baker's office.

The meeting touched on the following topics.

The 1996 Telecommunications Act directs the FCC to promote competition in set-top boxes. It is the FCC's job to implement this statute, but the past fourteen years show that the FCC cannot enact weak rules that are full of loopholes and just wait for a market to emerge: it needs to address the underlying economic and technological issues. Discriminatory billing and support practices, a lack of compatibility, and the Commission's waiver of rules designed to bring CableCARD costs down discourage would-be new entrants. Since DBS doesn't support CableCARD, consumers who want to use a competitive device usually have only one cable company to choose from, and as a result there is no competition between MVPDs to provide better CableCARD support. Instead, cable companies engage in practices that hold back competition by making it annoying or costly for consumers to use third-party devices. CableCARDS have thus been relegated to a small portion of the overall market, and Section 629 has not been completely realized.

CableCARD reform is one of the most achievable portions of the National Broadband Plan. But that is not the only reason that it is important that the Commission gets CableCARD right. Even if AllVid is implemented aggressively, CableCARD will be around for several more years, which is a long time in the consumer electronics world, and plenty of time for new entry by competitors. (Indeed, even after AllVid is rolled out, many consumers might still want to use their CableCARD equipment because, as the DTV transition has taught us, a lot of Americans don't like to just throw away their old equipment.) Additionally, many of the rules that the Commission should adopt for CableCARD could be directly ported over to AllVid. The Commission needs to make good on its rhetoric, and demonstrate that it will take action to promote competition in set-top boxes.

Self-installation.

The cable industry is oddly enthusiastic about scheduling truck rolls for CableCARD installations—the same service calls that, in other contexts, cable finds costly and inefficient. It is also odd that the same cable operators who protest that CableCARD self-installation would be too burdensome to support often allow consumers to provide and install their own retail cable modems for broadband service. These confusing arguments should not sway the Commission from requiring CableCARD self-installation as the *default* for new CableCARD customers. There is already evidence in the record that cable operators use the drawn-out CableCARD

installation and activation procedures as a means to discourage CableCARD use and to migrate customers to their proprietary boxes. The Commission cannot allow this to continue.

CableCARD installation should require little more than (1) Having the right flavor of CableCARD, (2) Plugging the card into a device, and (3) Calling an activation number. This process is so simple that self-installation should be the default, and only requiring that cable operators support self-installation will ensure that competitive devices have parity with cable-supplied devices. Without self-installation, customers of competitive devices have to wait for a technician visit (and might have to take time off from work) simply to use the device they have purchased at retail. It is as though after buying a PC, you had to wait for your ISP to come to your house to switch it on for you. Without self-installation, using competitive devices is always going to remain a bit more inconvenient to customers who are used to better service from more competitive markets.

“Common reliance” is a consumer protection and cost measure.

Congress made the determination that choice and competition in the cable set-top box market would bring consumers better products at lower prices. But the FCC has continually been swayed by cable’s suggestion that it will pass along any implementation costs to consumers. As a result, purportedly in the name of keeping prices low, various cable operators have been exempted from “common reliance” rules—rules that make sure cable operators use the same technologies and communications pathways to communicate with their own set-top boxes that competitors use for theirs. These rules are designed to ensure that cable operators properly support CableCARD, by making them depend on it themselves. These rules, if implemented correctly, would also bring the cost of CableCARD devices down by creating economies of scale that would benefit the entire CableCARD ecosystem. But because the common reliance rules have been undermined, to date, CableCARD consumers can’t count on adequate support and most CableCARD devices are relegated to the high end.

The trade press suggests that the FCC may weaken common reliance by making the “Evolution waiver” permanent. This would be a bad idea for the reasons above, and if specific technological reasons (e.g., the need to convert a cable system to digital) warrant a waiver, it should be temporary and tied to those specific technical facts, just as the Evolution waiver was. The FCC should not substitute its own judgment about short-term cost-savings for Congress’ determination that competitive markets in equipment benefit consumers.

Two-way communication.

Consumers should require only one piece of equipment for cable compatibility: the CableCARD. They should not have to use a cable-provided “tuning adapter” in order to access the full range of content they pay for, including switched digital channels. This bulky piece of gear makes it impossible for consumer electronics companies to market “all-in-one” TVs (as they aren’t all-in-one if you have to use what amounts to a set-top box to get them to work right), and they add a layer of complexity that discourages new entry by competitors. By contrast, the number of TVs of other devices that already have IP capabilities demonstrates that the competing “IP backchannel” proposal is more likely to be supported by third parties. Additionally, consumer electronics companies need a standard to build to. A fragmented market where one MSO uses an IP backchannel and another an incompatible tuning adapter would make it difficult to market a product and impossible to keep costs down.

Enforcement.

Without adequate enforcement, the FCC's rules will be meaningless. Especially if it fails to enact the structural changes that guarantee compliance and technological compatibility, the Commission needs to have the tools it needs to hold cable to account and get the law implemented. A mere telephone hotline is not enough: the Commission should launch a consumer information and complaint center on a .gov domain, investigate complaints, and follow through with fines. It should also consider partnering with NATOA, retailers, and the CE industry to provide support for consumers who might not understand their cable company's obligations. The FCC's CableCARD rules have been toothless for too long.

Billing and Transparency.

CableCARD is a pocketbook issue: Many consumers may be paying for devices they don't need, and have no easy way to see how to shave a few dollars off their ever-increasing cable bills. To begin to remedy this, every bill a cable company sends to its customers should have an itemized breakdown of costs, including (as necessary) the cost for renting a set-top box, the cost for renting a CableCARD, and detailed service costs. Cable companies should also provide the web address where consumers can complain about inadequate CableCARD or other support. This transparency is designed both to help consumers make rational economic choices, and to prevent the discriminatory service/device cross-subsidization that makes it difficult for competitors to bring their products to market.

* * *

Public Knowledge and Consumers Union appreciate that the Commission is addressing some of the flaws in the CableCARD regime via a rulemaking. But it must address the fundamental issues that deter new entry and deny consumers the benefits and cost-savings of a competitive market for equipment.

Sincerely,

/s/ John Bergmayer
Staff Attorney
Public Knowledge

CC:

William Lake
Nancy Murphy
Alison Neplokh
Mary Beth Murphy
Sherrese Smith
Dave Grimaldi

Brendan Murray
Jeffrey Neumann
Steven Broeckert
Kris Monteith
Marilynn Sonn

Rosemary Harold
Joshua Cinelli
Krista Witanowski
Rick Kaplan
Eloise Gore